

JAMES E. SMYTH, II, ESQ.
Nevada Bar No.: 6506
TARA C. ZIMMERMAN, ESQ.
Nevada Bar No.: 12146
KAEMPFER CROWELL
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135
Telephone: (702) 792-7000
Facsimile: (702) 796-7181
jsmyth@kcnvlaw.com
tzimmerman@kcnvlaw.com
Attorneys for Drax, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA for the use
and benefit of HANCOCK SANDBLAST &
PAINT LLC, an Oregon limited liability
company,

Plaintiff,

vs.

DRAX, INC., a corporation; and TRAVELERS
CASUALTY AND SURETY COMPANY OF
AMERICA, a corporation,

Defendants.

DRAX, INC., a corporation;

Cross-Claimant,

vs.

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, a corporation

Cross-Defendant.

DRAX, INC., a corporation;

Third-Party Plaintiff,

vs.

ANDERSON BURTON CONSTRUCTION,

Case No. 2:16-cv-01326-JAD-CWH

**STIPULATION AND ORDER TO STAY
THE PROCEEDING PENDING
ARBITRATION AND TO REFER ALL
ISSUES TO ARBITRATION**

ECF No. 49

1 INC.,
2 Third-Party Defendant.

3 ANDERSON BURTON CONSTRUCTION,
4 INC.,

5 Third Party Counterclaimant,

6 vs.

7 DRAX, INC., a corporation;

8 Third-Party Counterdefendant.

9 **STIPULATION AND ORDER TO STAY THE PROCEEDING PENDING
10 ARBITRATION AND TO REFER ALL ISSUES TO ARBITRATION**

11 WHEREAS, on June 14, 2016, Hancock Sandblast & Paint, LLC (“Hancock”) commenced this action by filing its Complaint against Drax, Inc. (“Drax”) and Travelers Casualty and Surety Company of American (“Travelers”) alleging causes of action on 12 Miller Act payment bond against Travelers, and for breach of contract and unjust enrichment 13 against Drax. On August 9, 2016, Travelers filed its Answer to Hancock’s Complaint. On 14 August 17, 2016, Drax filed its First Amended Answer to Hancock’s Complaint, as well as its 15 Cross-Claim against Travelers and Third-Party Complaint against Anderson Burton 16 Construction, Inc. (“ABC” and collectively with Hancock, Drax, and Travelers, the “Parties”), 17 alleging claims under the Miller Act on the payment bond against Travelers, equitable 18 indemnity and contribution against both Travelers and ABC and claims against ABC for breach 19 of contract, breach of implied covenant of good faith and fair dealing, and unjust enrichment. 20 Upon review of the Court’s docket, Travelers failed to answer or otherwise respond to Drax’s 21 Cross-Claim. ABC filed its Answer to Third-Party Complaint on September 12, 2016, and that 22 same day filed its Cross-Claim against Drax, including claims for express contractual indemnity 23

1 and implied contractual indemnity related to claims asserted by Hancock, and breach of written
2 contract. Drax filed its Answer to ABC's Cross-Claim on October 5, 2016;

3 WHEREAS, the Parties agreed to submit this case to mediation, and on May 23, 2017,
4 the Parties participated in a mediation with Eleissa C. Lavelle, Esq., mediator and arbitrator with
5 JAMS. No settlement was reached on the date of the mediation, but the Parties, with the
6 assistance of the mediator, continued to engage in settlement negotiations following the
7 completion of the formal mediation, and were subsequently able to reach final resolution and
8 settlement of Hancock's claims against Drax and Travelers;

9 WHEREAS, on August 28, 2017, this Court issued an Order [ECF No. 48] on the Parties'
10 Stipulation for Dismissal of Plaintiff's Claims Only [ECF No. 47]. As a result of this Order,
11 Hancock's claims against Drax and Travelers were dismissed with prejudice. The Order for
12 Dismissal did not affect any claims, cross claims, counterclaims or defenses by or among Drax,
13 ABC, and Travelers (the "Remaining Parties"), including the claims by and against the
14 Remaining Parties with respect to indemnity and/or contribution as to Hancock's claims against
15 Drax and Travelers;

16 WHEREAS, the claims, cross claims, counterclaims and defenses asserted by and among
17 the Remaining Parties remain unresolved;

18 WHEREAS, the Subcontract entered into between Drax and ABC on November 4, 2014,
19 contemplates submission of claims to binding arbitration;

20 WHEREAS, the Remaining Parties have agreed that all claims, cross claims,
21 counterclaims and defenses shall be submitted to binding arbitration;

22 NOW THEREFORE, it is hereby STIPULATED AND AGREED by and among the
23 Remaining Parties, through their respective counsel, to stay the proceedings in this action and to
24 refer to arbitration to be held at JAMS in Las Vegas, Nevada with a mutually agreeable single

1 arbitrator other than the mediator, Eleissa C. Lavelle, Esq., all claims, cross claims,
2 counterclaims and/or defenses of Drax, ABC, and/or Travelers that were or could have been
3 raised in this action.

4 IT IS FURTHER STIPULATED AND AGREED that all pretrial deadlines set forth in
5 the Stipulated Discovery Plan and Scheduling Order [ECF No. 18] filed on September 2, 2016,
6 as amended by the Order Granting Fourth Stipulation to Extend Discovery Deadlines [ECF No.
7 46] filed on July 14, 2017, be vacated, and the entire case be stayed pending arbitration, with this
8 Court retaining jurisdiction over this matter, to address any post-arbitration issues, including
9 confirmation of any arbitration award.

10 KAEMPFER CROWELL

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

11 By: /s/ James E. Smyth

By: /s/ Anthony P. Niccoli

12 James E. Smyth, Bar No. 6506
13 Tara C. Zimmerman, Bar No. 12146
1980 Festival Plaza Drive, Suite 650
Las Vegas, NV 89135

Anthony P. Niccoli
12800 Center Court Dr., Suite 300
Cerritos, CA 90703

14 ***Attorneys for Drax, Inc.***

LAW OFFICES OF DIETRICH &
SALAMONE, PLLC
Jay G. Trinnaman, Bar No. 9287
10161 Park Run Dr., Suite 150
Las Vegas, NV 89145
***Attorneys for Travelers Casualty and Surety
Company of America and Anderson Burton
Construction, Inc.***

15
16
17
18
19 **ORDER**

20 IT IS SO ORDERED. The Clerk of Court is directed to STAY (and administratively
21 close) THIS CASE pending arbitration.

22 
UNITED STATES DISTRICT JUDGE

23 DATED: 10-11-17
24